

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JESSE AVILA,

No. C 07-00143 CW (PR)

Plaintiff,

ORDER OF DISMISSAL

v.

JEANNE WOODFORD,

(Docket no. 15)

Defendant.

Plaintiff filed the present pro se prisoner complaint under 42 U.S.C. § 1983 while he was incarcerated at San Quentin State Prison. He has since been released on parole.

On May 28, 2008, Defendant Woodford filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). Defendant Woodford sent the motion to dismiss to Plaintiff at his address of record as of that date, 2845 Buena Crest Court, San Jose, California 95121. In the July 25, 2007 Order of Service, Plaintiff had been directed to file an opposition to any motion to dismiss no later than thirty days after the motion was filed. The thirty-day deadline passed, and Plaintiff did not file an opposition.

On November 10, 2008, the Court issued an Order on its own motion granting Plaintiff an extension of time to file an opposition to the motion to dismiss. The Court directed Plaintiff to file his opposition no later than forty-five days from the date of that Order. The Order was sent to Plaintiff at his San Jose address. It was not returned as undeliverable. Plaintiff failed to file his opposition by the forty-five-day deadline.

1 On February 20, 2009, the Clerk of the Court sent another copy
2 of the November 10, 2008 Order to Plaintiff at his San Jose address
3 because he called the Clerk's office and claimed that he did not
4 receive a copy of it. It was not returned as undeliverable. To
5 date, Plaintiff has not filed an opposition to the motion to
6 dismiss.

7 Pursuant to Federal Rule of Civil Procedure 41(b), a district
8 court may on its own motion dismiss an action for failure to
9 prosecute or to comply with a court order. See Link v. Wabash
10 R.R., 370 U.S. 626, 633 (1962); McKeever v. Block, 932 F.2d 795,
11 797 (9th Cir. 1991). Such a dismissal should only be ordered when
12 the failure to comply is unreasonable. See id. A court should
13 afford the litigant prior notice of its intention to dismiss. See
14 Malone v. United States Postal Serv., 833 F.2d 128, 133 (9th Cir.
15 1987).

16 Plaintiff filed his complaint in January, 2007. Since then he
17 has filed a notice of a change of address on April 23, 2007,
18 another notice of a change of address as well as a status request
19 on May 31, 2007, and his in forma pauperis application on July 16,
20 2007. Aside from calling the Clerk on February 20, 2009 to request
21 a copy of the November 10, 2008 Order, Plaintiff has not
22 communicated with the Court since his last filing on July 16, 2007.

23 Plaintiff was directed to file an opposition to Defendant
24 Woodford's motion to dismiss within thirty days of the date the
25 motion to dismiss was filed. Plaintiff did not file an opposition.
26 Even after the Court on its own motion granted Plaintiff an
27 extension of time to file an opposition, Plaintiff still failed to
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1 do so. Moreover, he has not requested a further extension of time
2 to file his opposition.

3 In the July 25, 2007 Order of Service, Plaintiff was warned
4 that he "must comply with the Court's orders in a timely fashion."
5 (July 25, 2007 Order at 5.) He was also told that: "Failure to do
6 so may result in the dismissal of this action for failure to
7 prosecute pursuant to Federal Rule of Civil Procedure 41(b)."

8 Accordingly, IT IS HEREBY ORDERED that the complaint in the
9 above-captioned action is dismissed without prejudice for failure
10 to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

11 All pending motions, including Defendant Woodford's motion to
12 dismiss (docket no. 15), are TERMINATED. The Clerk shall enter
13 judgment in accordance with this Order and close the file.

14 This Order terminates Docket no. 15.

15 IT IS SO ORDERED.

16 Dated: 3/24/09



17 CLAUDIA WILKEN
18 UNITED STATES DISTRICT JUDGE
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

AVILA et al,

Plaintiff,

v.

WOODFORD et al,

Defendant.

Case Number: CV07-00143 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on March 24, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Jesse Avila
Prisoner Id (BFN CQL 474; BKN 07017371)
2845 Buena Crest Court
San Jose, CA 95121

Trace O. Maiorino
California State Attorney General's Office
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004

Dated: March 24, 2009

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk

United States District Court
For the Northern District of California